IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

ROBERT PAOLINI,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.: CPU5-20-000597
	)	
SNYDER'S FURNITURE, LLC,	)	
	)	
Defendant.	)	

Submitted: January 31, 2022
Decided: March 30, 2022

Robert Paolini
62 Burning Oak Drive
Felton, DE 19943
Pro se Plaintiffs

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OPINION AND ORDER ON
MOTION FOR SUMMARY JUDGMENT

Amalfitano, J.

On June 30, 2020, Robert Paolini ("Plaintiff") brought this action against Snyder's Furniture, LLC ("Defendant") for breach of contract, breach of the implied warranty of merchantability, and breach of the implied covenant of good faith and fair dealing. Before the Court is Defendant's Motion for Summary Judgment. This is the Court's decision on the Motion for Summary Judgment after consideration of the pleadings, arguments, and the applicable case law.

FACTUAL & PROCEDURAL HISTORY

At this phase of the proceedings, the Court will briefly summarize the procedure and facts relevant to its determination of the Motion.

On June 30, 2020, Plaintiff filed a Notice of Appeal and Complaint in this Court pursuant to 10 *Del. C.* § 9571. On September 24, 2020, Plaintiff filed an Amended Complaint alleging breach of contract, breach of the implied warranty of merchantability, and breach of the implied covenant of good faith and fair dealing. Plaintiff asserted that on or about September 9, 2017, he purchased a set of furniture from Defendant for $5,535.00, which he paid in full on September 17, 2017. Plaintiff claimed the set of furniture was delivered on November 17, 2017, but did not meet the specifications of his order. Plaintiff advanced that after he initially refused delivery, he agreed to accept it "provisionally, while waiting for delivery of the correct order…" Plaintiff submitted that after several weeks passed, he contacted Defendant and was told a new furniture set was not ordered. Plaintiff averred Defendant offered him $600.00 "as settlement of [his] claim of improper color pattern." Plaintiff argued he accepted Defendant's offer, which was paid by money order on April 2, 2018. Plaintiff stated he signed a release of claims for the mistaken color pattern. Plaintiff asserted that upon further inspection, he determined the furniture set was "sold as new but second quality or was repaired prior to delivery…" Plaintiff claimed he contacted the manufacturer after

inspection, and it agreed to replace the furniture "if [he] was able to return the defective set after viewing the pictures that were sent to [the] manufacture." Plaintiff advanced he consulted a furniture repair expert who prepared a report detailing the defective quality and workmanship of the furniture set.

On October 8, 2020, Defendant filed a Motion to Dismiss pursuant to Court of Common Pleas 12(b)(6). In its Motion, Defendant argued Plaintiff admits to accepting the furniture as is. Furthermore, Defendant submitted that the parties entered into a valid modified and superseding agreement for Plaintiff to accept the furniture set "as is."

On October 26, 2020, Plaintiff filed a Response to the Motion to Dismiss stating he believed Defendant took advantage of his known disability when it took his furniture order. Moreover, Plaintiff argued that if he did sign any agreement, it was under duress and heavy prescribed medications.

On June 21, 2021, this Court held a hearing on the Motion to Dismiss. At the hearing, this Court directed Defendant to submit an amended motion to dismiss to include a copy of the alleged modified and superseding agreement referenced by Defendant at the hearing and in its Motion to Dismiss. The Court further directed Plaintiff to file a response to the amended motion to dismiss.

On July 6, 2021, Defendant filed a Renewed Motion to Dismiss to include a copy of the alleged modified and superseding agreement. This documentation consisted of an email exchange between Plaintiff and a representative of Defendant from February 24, 2018 to April 6, 2018. In the exchange, Plaintiff offered to accept the furniture set [as is] for $600.00, in lieu of waiting for a replacement furniture set. Specifically, on February 24, 2018, he wrote to Defendant "[l]et me throw this out there: Since the lead me [sic] is so f ar [sic] out, if I keep this set what can you do to compensate me, lower the price? With all the disruption this has c aused [sic] I feel $600.00 is

fare [sic]." Defendant communicated to Plaintiff "[i]f you are willing to accept a $600 refund to accept the table as is, in lieu of waiting for a replacement one, please state that in writing (can be via email)..." Following this exchange, Plaintiff requested more money to settle the matter; however, Defendant referred Plaintiff to his original offer of $600.00. On March 31, 2018, after much back and forth, Defendant informed Plaintiff "[o]ur offer, which you initially suggested is $600. It expires at the end of today." That same day, Plaintiff responded "[e]ither way, I'm exhausted with this issue...Mail a check today of $600.00 and when it clears I will let you know." On April 6, 2018, Plaintiff asked Defendant "[h]ave you mailed the check?" Defendant informed him that a money order requiring signature was sent to him on April 2, 2018. Later that day, Plaintiff confirmed that he received the money order.

On August 10, 2021, Plaintiff filed a Response to the Renewed Motion to Dismiss. In his Motion, Plaintiff argued he believed the email agreement produced by Defendant was not received by him or was tampered with.

On August 23, 2021, this Court issued a Brief Scheduling Order. After a review of the documentation presented in the Renewed Motion to Dismiss, the Court determined that while the agreement was incorporated into Plaintiff's Complaint by reference, the Court would have to rely upon the agreement to prove the truth of its content. Therefore, Defendant's Renewed Motion to Dismiss was converted to a Motion for Summary Judgment. As such, this Court directed the parties to submit supplemental briefing pursuant Court of Common Pleas Civil Rule 56.

On September 23, 2021, Defendant filed the instant Motion for Summary Judgment. In its Motion, Defendant argued Plaintiff accepted consideration in the amount of $600.00 to keep the furniture set "as is," which resulted in an agreement between the parties. Further, Defendant asserted this valid and binding agreement modified and superseded the agreement for Plaintiff to

receive what he asserted he actually ordered. Moreover, Defendant argued Plaintiff did not properly allege a claim for implied warranty of merchantability, but clarified that even if he did, he contractually agreed to accept the furniture set as is. Defendant further submitted that Plaintiff walked away from any claim for implied warranty of merchantability by accepting the alleged unmerchantable furniture, which was in his possession for weeks, at a discount. Additionally, Defendant contended it did not agree in bad faith to correct any alleged defects with the furniture. Defendant stated that instead, it offered Plaintiff $600.00 to accept the furniture as is, and he accepted. In closing, Defendant requested this Court grant its Motion for Summary Judgment.

On October 15, 2021, Plaintiff filed a Response to the Motion for Summary Judgment riddled with unresponsive and unrelated arguments. Plaintiff argued Defendant failed to produce the agreement between the parties. Further, he alleged Defendant refused to disclose evidence to him. Additionally, Plaintiff restated the furniture set was reconditioned. Moreover, Plaintiff contended he believed some of the emails produced by Defendant were not received or altered. Plaintiff submitted a trial is necessary, as he has an expert witness to testify to the defects in the furniture set. Plaintiff advanced Defendant is wasting the Court's time and causing him to incur additional legal fees. In closing, Plaintiff requested this Court deny the Motion for Summary Judgment.

On January 31, 2022, this Court heard oral arguments on the Motion for Summary Judgment. At the hearing, this Court took the matter under advisement.

STANDARD OF REVIEW

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter

of law."[1] When parties submit cross-motions for summary judgment, neither party's motion will be granted "unless no genuine issue of material fact exists and one of the parties is entitled to judgment as a matter of law."[2]

A genuine issue of material fact arises when "the parties are in disagreement concerning the factual predicate for the legal principles they advance."[3] Summary judgment is proper only where the ultimate fact finder has nothing to decide, as the "function of the judge in passing on a motion for summary judgment is not to weigh the evidence."[4] Further, summary judgment is inappropriate if, upon an examination of the record, it seems necessary to further develop the record in order to "clarify the application of the law to the circumstances."[5]

In analyzing a motion for summary judgment, the Court construes all reasonable inferences from the factual record in the "light most favorable to the nonmoving party to determine if there is any dispute of material fact."[6] If a dispute as to a material fact exists, then summary judgment is inappropriate.[7]

DISCUSSION

I. Breach of Contract

"It is an elementary principle of contract law that an acceptance of an offer, in order to be effectual, must be identical with the offer and unconditional."[8] "The acceptance of a contract may be implied from the acts and conduct of the party to whom the offer is made."[9] "An overt

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[1] CCP Civ. R. 56.
[2] *Gillespie* v. *Chelsea on Square Apartments,* 2010 WL 3386553, at *3 (Del. Super.).
[3] *Padovani* v. *Progressive N. Ins. Co.,* 2010 WL 5536528, at *4 (Del. Super.) (quoting *Merrill* v. *Crothall-Am., Inc.,* 606 A.2d 96, 99 (Del. 1992)).
[4] *Id.*
[5] *Gumbs* v. *State, Dep't of Labor,* 2018 WL 582433, at *5 (Del. Super.); *Gunzl* v. *Chadwick,* 2 A.3d 74 (Del. 2010).
[6] *Doe* v. *Cahill,* 884 A.2d 451, 462 (Del. 2005).
[7] *Paul* v. *Deloitte & Touche, LLP*, 974 A.2d 140, 145 (Del. 2009).
[8] *Friel v. Jones,* 206 A.2d 232, 233 (Del.Ch.1964), *a'ffd,* 212 A.2d 609 (Del.1965).
[9] *Montray Realty Co. v. Arthurs,* 30 Del. (7 Boyce) 168, 105 A. 183 (Del.1918).

manifestation of assent, not a subjective intent, controls the formation of a contract."[10] The unexpressed subjective intention of a party is therefore irrelevant.[11] Acceptance of the consideration offered can be construed as an acceptance of the offer.[12] "[A] settlement agreement is enforceable as a contract."[13] In the case of *Price v. State Farm Mutual Automobile Insurance Co.*, the plaintiff accepted a settlement check from defendant and subsequently deposited the check. The *Price* court concluded plaintiff's conduct of depositing the check manifested his objective intent to be bound to defendant's settlement offer.

This Court finds the Plaintiff's act of accepting the $600.00 settlement offer from Defendant was an overt manifestation of assent. After a series of e-mail exchanges, in which the parties negotiated a sum for Plaintiff to accept the furniture set as is, Defendant advised Plaintiff "[o]ur offer, which you initially suggest is $600. It expires at the end of today." Plaintiff responded "[e]ither way, I'm exhausted with this issue…Mail a check today of $600.00 and when it clears I will let you know." As such, the parties unmistakably came to an agreement that Plaintiff would accept to keep the furniture set as is for $600.00. Plaintiff admitted to this Court that he accepted Defendant's settlement offer of $600.00 paid by money order on April 2, 2018.[14] Plaintiff's admission that he accepted Defendant's settlement offer, coupled with the clear language depicted in the email exchanges, demonstrates acceptance. Plaintiff undeniably accepted Defendant's $600.00 settlement offer, and such agreement superseded any original agreement between the parties.

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[10] *Acierno v. Worthy Bros. Pipeline Corp.*, 693 A.2d 1066, 1070 (Del.1997) (citing "*Industrial America", Inc. v. Pulton Industries, Inc.*, 285 A.2d 412, 415 (1971)).

[11] *Price v. State Farm Mut. Auto. Ins. Co.*, 2013 WL 1213292, at *6 (Del. Super. Ct. Mar. 15, 2013), aff'd, 77 A.3d 272 (Del. 2013).

[12] *Id* (citing *Montray Realty Co. v. Arthurs*, 30 Del. 168, 105 A. 183 (1918)).

[13] *Heiman Aber & Goldlust v. Ingram,* 1998 WL 442691, at *2 (Del. Super. May 14, 1998).

[14] *See* Pl.'s Am. Compl.

II. Implied Warranty of Merchantability

"To be merchantable, a good must be "fit for the ordinary purpose for which such goods are used," among other criteria, unless such warranty is excluded or modified."[15] "[T]o be successful on a breach of warranty of merchantability claim, a plaintiff must prove: "(1) that a merchant sold the goods; (2) which were defective at the time of sale; (3) causing injury to the ultimate consumer; (4) the proximate cause of which was the defective nature of the goods; and (5) that the seller received notice of the injury."[16] In *Reybold Grp., Inc. v. Chemprobe Techs., Inc.*, the Delaware Supreme Court found that to survive a motion for summary judgement, the plaintiff was "required to present some evidence to support all of the elements of its claim for a breach of implied warranty of merchantability."[17] The Supreme Court further stated that this could have been done by "either direct or circumstantial evidence."[18]

Here, Plaintiff neglected to make a *prima facia* case for breach of the implied warranty of merchantability. Instead, Plaintiff argued the furniture set he received did not meet the specifications of his order. Specifically, he claimed the furniture set was the "improper color pattern," "sold as new but second quality," and "repaired prior to delivery." Plaintiff fails to make any assertion or provide any evidence to support a claim for breach of the implied warranty of merchantability. Moreover, when Plaintiff entered into a subsequent and superseding agreement with Defendant to accept the furniture set "as is" for $600.00 consideration, he relinquished any claim that the furniture set was unmerchantable.

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[15] 6 *Del. C.* § 2–314.
[16] *Reybold Grp., Inc. v. Chemprobe Techs., Inc.*, 721 A.2d 1267, 1269 (Del. 1998).
[17] *Id* at *1270.
[18] *Id.*

III. Implied Covenant of Good Faith and Fair Dealing

"Stated in its most general terms, the implied covenant requires 'a party in a contractual relationship to refrain from arbitrary or unreasonable conduct which has the effect of preventing the other party to the contract from receiving the fruits' of the bargain."[19] "Thus, parties are liable for breaching the covenant when their conduct frustrates the 'overarching purpose' of the contract by taking advantage of their position to control implementation of the agreement's terms."[20]

In this case, Plaintiff asserted no facts to suggest Defendant acted in bad faith. Predominantly, Plaintiff conceded to this Court that he accepted Defendant's settlement offer of $600.00. As such, no facts submitted to this Court suggested Defendant acted in bad faith. Plaintiff made vague statements that it was his belief the email exchange between him and Defendant was tampered with or not received by him. However, this Court finds the email exchange clearly demonstrated Plaintiff's willingness to enter settlement negotiations with Defendant. In fact, he initiated the negotiations on February 24, 2018 when he wrote to Defendant "[l]et me throw this out there: Since the lead me [sic] is so f ar [sic] out, if I keep this set what can you do to compensate me, lower the price? With all the disruption this has c aused [sic] I feel $600.00 is fare [sic]." On March 31, 2018, he agreed to keep the furniture set as is and accept $600.00 as consideration when he stated "[e]ither way, I'm exhausted with this issue…Mail a check today of $600.00 and when it clears I will let you know." Thereafter, on April 6, 2018, he wrote Defendant asking if the check was mailed. Defendant informed him that a money order had

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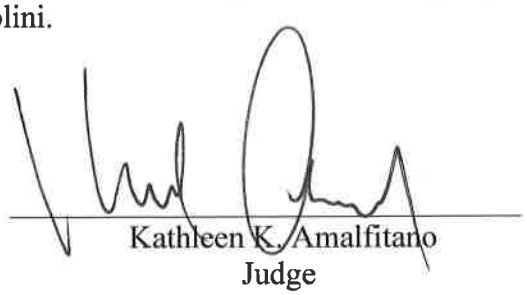
[19] *Dunlap v. State Farm Fire & Cas. Co.*, 878 A.2d 434, 442 (Del. 2005) (citing to *Wilgus v. Salt Pond Inv. Co.*, 498 A.2d 151, 159 (Del.Ch.1985), *construing* Restatement § 205).
[20] *Id.* (citing to *Breakaway Sols., Inc. v. Morgan Stanley & Co. Inc.*, No. CIV.A. 19522, 2004 WL 1949300 (Del. Ch. Aug. 27, 2004)).

been sent on April 2, 2018. Shortly after, Plaintiff confirmed he received it. Thus, this Court cannot find Defendant's actions constituted bad faith.

CONCLUSION

For the foregoing reasons, this Court grants Defendant Snyder's Furniture, LLC's Motion for Summary Judgment against Plaintiff Robert Paolini.

IT IS SO ORDERED.



Kathleen K. Amalfitano
Judge

cc: Ms. Christine Syva, Civil Clerk